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Insurance Law—Mandatory Arbitration—Inadequacy of MVAIC Arbitration Award not Grounds for Judicial Review

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tion. There is no real reason why the person who is *eventually* going to enforce the right has to be the one filing the notice. This is particularly so in view of section 59 of the N.Y. Real Property Law, which provides for the alienability and devisability of reversionary interests. The *Biltmore*³⁷ case, relied on by the Court of Appeals, involved a more drastic statute, as there, a *suit* had to be brought to enforce the reverter within one year from the date of passage of the act, and that year had expired before actuation of the reverter, making suit impossible.³⁸ The N.Y. Law Revision Commission anticipated the elimination of a substantial number of useless, unenforced reverters and rights of reentry when they stated: "With advantages of such magnitude in prospect, the incidental sacrifices of the interests of many individuals might be tolerated without too great difficulty."³⁹ It is submitted that even assuming, *arguendo*, that such legislative manhandling of property interests is desirable, retroactive application is not consonant with traditional notions of due process when applied to the particular facts of this case.⁴⁰ However, if preservation of alienability is of such importance that the legislature deems a statute of this type necessary, it would seem more reasonable to hold that *any* owner of the reversionary interest may file at *any* time up to the statutory cut-off date.

ALAN A. RANSOM

INSURANCE LAW—MANDATORY ARBITRATION—INADEQUACY OF MVAIC ARBITRATION AWARD NOT GROUNDS FOR JUDICIAL REVIEW

Decedent while operating his automobile struck a bridge abutment. He was then struck from behind by a hit-and-run automobile and was fatally injured. Decedent's estate and his insurance company failed to agree on an appropriate amount for damages and in accordance with the terms of the policy, an arbitration was held. The 23-year old decedent was survived by his widow and two infant children. Even though a conservative estimate would set the value of decedent's life at \$10,000,¹ the arbitrator awarded the estate \$500.00. On motion to vacate the arbitrator's award the Supreme Court, Special Term, set aside

37. *Biltmore Village v. Royal Biltmore Village, Inc.*, 71 So. 2d 727 (Fla.), 41 A.L.R.2d 1380 (1954).

38. The statute does provide, however, that the restriction may be enforced by equitable remedies.

39. N.Y. Law Revision Commission Reports and Recommendations, N.Y. Leg. Doc. No. 65(P), 689, 714 (1951).

40. See Simes & Taylor, *Improvement of Conveyancing by Legislation* 288-89 (1960), in which the authors set forth two Model Acts dealing with possibilities of reverter and rights of entry. The first, which simply limits their duration, is not retroactive. The second, limiting their duration when the required notice is not filed, is wholly retroactive. The authors support its constitutionality on the reasonable recording requirement of the *Wichelman* case.

1. Justice Bergan, dissenting in the instant case, valued the decedent's life at 60,000 dollars. The policy limits, however, would preclude an award in excess of 10,000 dollars. Instant case at 887, 258 N.Y.S.2d at 421.

the award on the ground that its inadequacy established partiality on the part of the arbitrator. The Supreme Court, Appellate Division, reversed the order of the Special Term, and held that claimant had failed to prove partiality of the arbitrator since inadequacy of the award alone did not prove partiality. On appeal to the Court of Appeals, *held*, affirmed upon the opinion of the Appellate Division, three judges dissenting. *Torano v. Motor Vehicle Accident Indemnification Corp.*, 15 N.Y.2d 882, 206 N.E.2d 353, 258 N.Y.S.2d 418 (1965), *affirming*, 19 A.D.2d 356, 243 N.Y.S.2d 434 (1st Dep't 1963).

In 1959, the legislature, recognizing the need to compensate innocent victims of negligent motorists who were uninsured, financially irresponsible, or unknown, created a new type of automobile insurance generally known as the uninsured motorist coverage.² To administer the program a separate non-profit organization known as the Motor Vehicle Accident Indemnification Corporation³ (MVAIC) was created.⁴ Funds to operate MVAIC are provided by a charge against insurers writing automobile liability policies in this state. The MVAIC endorsement is attached to every policy issued in the state. The Legislature in declaring the purpose of the statute stated ". . . it is a matter of grave concern that such innocent victims are not recompensed for injury or financial loss inflicted upon them . . . the public interest can best be served by . . . operation of the MVAIC."⁵ The statute meant to provide the same recompense to persons injured by uninsured motorists as that provided to victims of insured motorists.⁶ The article being remedial is to be liberally construed once the claimant has established that he is the person for whose benefit the statute was enacted.⁷ The statute further provides coverage of \$10,000 per person, \$20,000 per accident.⁸ Pursuant to its rule-making authority⁹ and with the approval of the Superintendent of Insurance, MVAIC provided arbitration as the sole remedy for parties who failed to agree as to the issue of liability or the amount of damages.¹⁰ The arbi-

2. N.Y. Ins. Law § 167(2)(a).

3. N.Y. Ins. Law § 600-26.

4. For an explanation of MVAIC and its procedures, see Ward, *New York's Motor Vehicle Accident Indemnification Corporation: Past, Present and Future*, 8 Buffalo L. Rev. 215 (1959); Aksen, *Uninsured Motorist Coverage: A Guide to MVAIC and Arbitration*, 15 Arb. J. 166 (1960).

5. N.Y. Ins. Law § 600, *McCarthy v. Motor Vehicle Acc. Indemnification Corp.*, 16 A.D.2d 35, 38, 224 N.Y.S.2d 909, 912 (4th Dep't 1962), *aff'd*, 12 N.Y.2d 922, 238 N.Y.S.2d 101, 188 N.E.2d 405 (1963).

6. *Morisi v. Motor Vehicle Acc. Indemnification Corp.*, 19 A.D.2d 727, 242 N.Y.S.2d 641 (2d Dep't 1963).

7. *Diamond v. Motor Vehicle Acc. Indemnification Corp.*, 37 Misc. 2d 714, 235 N.Y.S.2d 505 (Monroe County Ct. 1962), *aff'd*, 19 A.D.2d 590, 240 N.Y.S.2d 954 (4th Dep't 1963).

8. N.Y. Ins. Law §§ 167(2)(a), 610.

9. N.Y. Ins. Law § 606(b).

10. *Rosenbaum v. American Sur. Co.*, 11 N.Y.2d 310, 183 N.E.2d 667, 229 N.Y.S.2d 375 (1962); *Kaiser v. Motor Vehicle Acc. Indemnification Corp.*, 35 Misc. 2d 636, 231 N.Y.S.2d 178 (Sup. Ct. 1962) holding that arbitration under the uninsured motorist endorsement is strictly limited to the issues of negligence and damages; *Sinclair v. Motor Vehicle Acc. Indemnification Corp.*, 33 Misc. 2d 226, 225 N.Y.S.2d 668 (Sup. Ct. 1962) (MVAIC insured was obliged to first pursue his remedy in arbitration and the court could not make a determination in a manner affecting arbitration).

tration clause was written into the MVAIC endorsement for the purpose of avoiding antagonism between the insurance companies and their policy holders.¹¹

In New York an arbitration award is generally final and not reviewable by the courts. It appears that the courts allowed this finality because of the consensual nature of the agreement:

The conclusiveness of awards is based upon the principle that the parties having chosen judges of their own and agreed to abide by their decision, they are bound by their agreement and compelled to perform the award.¹²

Likewise, when the rule of finality of arbitration awards was codified it was done in a setting of voluntary arbitration agreements:

The purpose of that article [Article 84 of the C.P.A., now Article 75, N.Y. CPLR] is to give effect to *contracts* providing for the settlement of disputes before tribunals of the parties' own *choosing* by rendering such agreement irrevocable and, in effect, subject to specific enforcement *The law "does not bring the contract into being,* but adds a new implement, the remedy of specific performance for its more effectual enforcement."¹³

The modicum of legislative history available on Article 84 of the C.P.A. [Article 75, N.Y. CPLR] also indicates that the legislature was referring to consensual arbitration agreements and attempting to give them a more stable role in New York State.¹⁴

Section 7511 of the New York CPLR provides the limited and exclusive¹⁵ grounds under which a court may vacate an arbitration award. Partiality¹⁶ is one of them. The courts assume that the arbitrator is impartial¹⁷ and the burden of proving partiality rests on the party making the charge.¹⁸ Partiality has been

11. McLaughlin, *Arbitration Under Uninsured Motorist Coverage*, Ins. L.J. 353 (1962).

12. In the Matter of Wilkins, 169 N.Y. 494, 499, 62 N.E. 575, 577 (1902); see Sweet v. Morrison, 116 N.Y. 19, 22 N.E. 276, 15 Am. St. Rep. 376 (1889); Masury v. Whiton, 111 N.Y. 679, 18 N.E. 638 (1888); Hoffman v. De Graaf, 109 N.Y. 638, 16 N.E. 357 (1888); Fudickar v. Guardian Mut. Life Ins. Co., 62 N.Y. 392 (1875); Perkins v. Giles, 50 N.Y. 228 (1872).

13. In the Matter of Lipschutz, 304 N.Y. 58, 61, 106 N.E.2d 8, 10 (1952) (emphasis added); *accord*, In the Matter of Feuer Transp., 295 N.Y. 87, 65 N.E.2d 178 (1946); Marchant v. Mead-Morrison Mfg. Co., 252 N.Y. 284 (1929).

14. "The function of civil practice act provisions relating to arbitration is to give effect to *written agreements* providing for arbitration, rendering them irrevocable and subject to specific performance Parties desiring the benefits of the proposed article may easily comply with its requirements." (Emphasis added.) 1958 N.Y. Advisory Committee on Practice and Procedure, Second Preliminary Report 130.

15. In the Matter of Martin Weiner Co., 2 A.D.2d 341, 155 N.Y.S.2d 802 (1st Dep't 1956), *aff'd*, 3 N.Y.2d 806, 144 N.E.2d 647, 166 N.Y.S.2d 7 (1957); In the Matter of Livingston, 32 Misc. 2d 258, 223 N.Y.S.2d 968 (Sup. Ct. 1961).

16. N.Y. CPLR § 7511(b)1[iii].

17. In the Matter of Astoria Medical Group (Health Ins.), 11 N.Y.2d 128, 182 N.E.2d 85, 227 N.Y.S.2d 401 (1962); In the Matter of Duskin Sales Inc., 38 Misc. 2d 210, 237 N.Y.S.2d 664 (Sup. Ct. 1962); Knickerbocker Textile Corp. v. Sheila-Lynn, Inc., 172 Misc. 1015, 16 N.Y.S.2d 435 (Sup. Ct. 1939), *aff'd*, 259 App. Div. 992, 20 N.Y.S.2d 985 (1st Dep't 1940).

18. In the Matter of Terminal Auxiliar Maritima, S.A., 32 Misc. 2d 871, 224 N.Y.S.2d 935 (Sup. Ct. 1962); Everett v. Brown, 120 Misc. 349, 198 N.Y. Supp. 462 (Sup. Ct. 1923).

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proven where one of the arbitrators passed judgment on his own claim,¹⁹ where the arbitrator who was counsel of record for an insurance company belonging to MVAIC denied the claim filed with MVAIC,²⁰ and where the arbitrator failed to disclose he had been a business partner of one of the parties to the contract.²¹ Also, courts have vacated awards on the ground of partiality when the arbitrator had a personal interest in the claim,²² when the arbitrator recommended that 10% of the award be given to an institution to which he was vitally interested,²³ and when the arbitrator asked for and accepted a loan from one of the parties to the proceeding.²⁴ However, partiality is not shown when an arbitrator discloses his views in advance of a formal decision.²⁵ Evidence of injudicious conduct²⁶ by an arbitrator does not show partiality, nor does a relationship involving isolated transactions between an arbitrator and one of the parties.²⁷ Partiality was not indicated when an arbitrator took figures, upon which findings were based, from the brief of one of the parties.²⁸ Partiality is not shown by inadequacy²⁹ of an award. The validity of an award is not affected by the absence of a recital of the reasons for it,³⁰ or because the arbitrators did not set forth their

19. In the Matter of Shirley Silk Co., 260 App. Div. 572, 23 N.Y.S.2d 254 (1st Dep't 1940).

20. In the Matter of Merolla, 231 N.Y.S.2d 760 (Sup. Ct. 1962).

21. Application of Siegal, 153 N.Y.S.2d 673 (Sup. Ct. 1956).

22. Greenspan v. Greenspan, 129 N.Y.S.2d 258 (Sup. Ct. 1954).

23. In the Matter of Rosenberg, 180 Misc. 500, 41 N.Y.S.2d 14 (Sup. Ct. 1943).

24. In the Matter of Friedman, 215 App. Div. 130, 213 N.Y. Supp. 369 (1st Dep't 1926).

25. Federman v. Farber, 73 N.Y.S.2d 682 (Sup. Ct. 1947).

26. In the Matter of De Nicola, 2 A.D.2d 675, 152 N.Y.S.2d 995, *reargument and appeal denied*, 2 A.D.2d 817, 155 N.Y.S.2d 774 (1st Dep't 1956).

27. In the Matter of Cross Properties, Inc., 15 A.D.2d 913, 225 N.Y.S.2d 1014 (1st Dep't 1962), *aff'd*, 12 N.Y.2d 806, 187 N.E.2d 129, 236 N.Y.S.2d 61 (1962).

28. In the Matter of First Nat'l Oil Corp., 2 A.D.2d 590, 157 N.Y.S.2d 313 (2d Dep't 1956).

29. In the Matter of Wainwright, 14 A.D.2d 971, 221 N.Y.S.2d 409 (3d Dep't 1961) an award of \$1,145 which only covered the funeral expenses of the insureds' 17 year old daughter, was affirmed by the court even though the special term may have justifiably felt that the award was woefully inadequate. In the Matter of Phillips, 10 A.D.2d 689, 198 N.Y.S.2d 538 (1st Dep't 1960), *aff'd*, 9 N.Y.2d 873, 175 N.E.2d 825, 216 N.Y.S.2d 694 (1961) involved a forty-two year old decedent who earned in excess of thirteen thousand dollars per year and contributed in excess of two thousand dollars per year to the support of his sister and invalid mother. The award of three thousand dollars did not evidence partiality. ". . . Nor is it evident merely from the amount of this award that there was partiality, corruption, or other misconduct in the arbitrator. . . ." *Id.* at 874, 216 N.Y.S.2d at 694, 175 N.E.2d at 825. [The court in the instant case relied upon *In the Matter of Wainwright supra*, and *In the Matter of Phillips supra*, for the proposition that inadequacy of an award does not show partiality and is therefore not grounds for vacatur. Both *In the Matter of Wainwright supra*, and *In the Matter of Phillips supra*, arose, however, before MVAIC came into existence. The insureds had purchased their uninsured motorist coverages voluntarily and had agreed to arbitrate any differences as to damages. Therefore, although the holdings in *In the Matter of Wainwright supra*, and *In the Matter of Phillips supra*, are correct as to consensual arbitrations, it does not necessarily follow that the same rule applies to mandatory arbitration awards. Therefore, the question of whether a grossly inadequate award, rendered in a mandatory arbitration proceeding, may be set aside had not been reached.] *But see* Smith v. Cooley, 5 Daly 401 (1874). Partiality was shown where the arbitrator with a view to his appointment examined a building and formed an opinion as to its value. His subsequent award being excessive was set aside.

30. In the Matter of Willow Fabrics, Inc., 20 A.D.2d 864, 248 N.Y.S.2d 509 (1st Dep't 1964).

calculations in arriving at its amount.³¹ Similarly, the arbitration award may not be impeached because of mere errors of judgment, whether as to law or as to the facts.³² ". . . it [a consensual arbitration award] is unassailable, operates as a final and conclusive judgment, and however disappointing it may be the parties must abide by it."³³

In the instant case claimant argued that the gross inadequacy of the award indicated the arbitrator's partiality. The Appellate Division's opinion, stated that the several grounds established by Section 7511 of the N.Y. CPLR are exclusive, and that an award may not be attacked for inadequacy by gross inference of partiality by the arbitrator. In essence, inadequacy itself does not prove partiality, since the inadequacy may also be due to the arbitrator's mistake as to law, or fact, or even his incompetence. These latter causes would not be grounds for vacatur.³⁴ In addition the inadequacy in the instant case may have been due to apportionment of damages as the decedent collided with a bridge abutment and may have been near death before being struck by the hit-and-run motorist. But the court felt it unwise to deal in conjectures as arbitrators are meant to exercise broad discretion largely free of substantive and procedural limitations and accordingly they need not justify their awards.

The holding of the majority in the instant case appears to be commensurate with existing law as it applies to the finality of *consensual* arbitration awards. The reasons for continuing to encourage arbitration and the finality rule are as cogent today as in earlier times. Arbitration is inexpensive, informal, speedy³⁵ and "more effective . . . than can be had by the tortious course of litigation."³⁶ To relax the rule of finality as it applies to *consensual* arbitration awards would be to encourage dissatisfied people to turn to the courts and have

31. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); In the Matter of Weiner Co., 2 A.D.2d 341, 155 N.Y.S.2d 802 (1st Dep't 1956), *aff'd*, 3 N.Y.2d 806, 144 N.E. 647, 166 N.Y.S.2d 7 (1957); In the Matter of Big-W Corp., 24 Misc. 2d 145, 192 N.Y.S.2d 721 (Sup. Ct. 1959), *aff'd*, 14 A.D.2d 817, 218 N.Y.S.2d 530 (2d Dep't 1961); In the Matter of Linwood, 16 Misc. 2d 488, 178 N.Y.S.2d 492 (Sup. Ct. 1958), *aff'd*, 7 A.D.2d 757, 181 N.Y.S.2d 772 (2d Dep't 1958).

32. *Matter of Wilkins*, 169 N.Y. 494, 62 N.E. 575 (1902); In the Matter of Dembitzer, 3 A.D.2d 211, 159 N.Y.S.2d 327 (1st Dep't 1957), *aff'd*, 3 N.Y.2d 851, 144 N.E.2d 728, 166 N.Y.S.2d 85 (1957); In the Matter of Pine St. Realty Co., Inc., 233 App. Div. 404, 253 N.Y. Supp. 174 (1st Dep't 1931); In the Matter of A. D. Julliard & Co., Inc., 2 Misc. 2d 753, 152 N.Y.S.2d 394 (Sup. Ct. 1956) (an award may not be vacated even for a fundamental error of law or fact). *But see* *Fudickar v. Guardian Mut. Life Ins. Co.*, 62 N.Y. 392 (1875), stating that awards will not be opened for errors of law or fact, but ". . . subject to the qualification that awards may be set aside for a palpable error of fact, like a miscalculation of figures It may also be set aside for error of law, when the question of law is stated on the face of the award, and it appears that the arbitrators meant to decide according to the law but did not. In both these cases the award is not what the arbitrators themselves intended. It is not, in fact, their judgment; for, except for the mistake, the award would have been different. But it is held, in accordance with what seems to be a just view of the subject, that arbitrators may, unless restricted by the submission, disregard strict rules of law or evidence and decide according to their sense of equity. . . ." *Id.* at 400.

33. In the Matter of Wilkins, 169 N.Y. 494, 62 N.E. 575, 576 (1902).

34. See cases cited in note 31 *supra*.

35. For discussion on this point see King, *Arbitration of Automobile Accident Claims*, 14 U. Fla. L. Rev. 328 (1962).

36. Goldberg, *A Supreme Court Justice Looks at Arbitration*, 20 Arb. J. 13, 14 (1965).

the effect of making arbitration only a step in the judicial process.³⁷ Such an addition to the burden now carried by arbitration to court calendars would perhaps prove intolerable.³⁸ There is then, an important social need advanced by the finality of *consensual* arbitration awards. However arbitration under the MVAIC endorsement is not consensual, but mandatory, since a person may not lawfully drive an automobile in New York without submitting to it. Since the rule of finality developed in the common law in a setting of consensual arbitration³⁹ and as the Legislature in enacting Article 84 of the N.Y. CPA [Article 75 of the N.Y. CPLR] seemed to be addressing itself to consensual arbitrations,⁴⁰ it appears that neither the rule of finality nor the N.Y. CPLR should apply to mandatory⁴¹ arbitrations under MVAIC. The Appellate Division's opinion to the contrary in the instant case citing only authorities⁴² involving consensual arbitrations is not persuasive. As argued by Chief Judge Desmond in dissent, the result in the instant case does such violence to the statutory purpose⁴³ of MVAIC, that the Court should intervene. His position is not without support in the case law.⁴⁴ For the most part courts have strictly adhered to the rule of finality, but when an arbitrator reached a result that was contrary to public policy⁴⁵ the courts have intervened. For example, an arbitration award enforce-

37. See *In the Matter of Mole*, 14 A.D.2d 1, 217 N.Y.S.2d 330 (4th Dep't 1961), refusing to vacate an award based upon newly discovered evidence and stating that if "... newly discovered evidence could be entertained, the arbitration award would be the beginning rather than the end of the controversy and the protracted litigation which arbitration is meant to avoid would be invited." *Id.* at 3, 217 N.Y.S.2d at 333.

38. See Luce, *Rule of Law and the Administration of Justice*, 45 J. Am. Jud. Soc'y 86 (1962) pointing out that personal injury cases often drag on more than five years.

39. See cases cited in note 12 *supra*.

40. See cases and legislative history cited in notes 13 and 14 *supra*.

41. Pennsylvania has circumvented the problem under its compulsory arbitration statute for small claims by providing for court review of the award. If either party is dissatisfied with the results of the arbitration award he is guaranteed the right to a trial de novo before a jury. For comments on the system see: Rosenberg & Schubert, *Trial by Lawyer: Compulsory Arbitration of Small Claims in Pennsylvania*, 74 Harv. L. Rev. 448 (1961); King, *Arbitration of Automobile Accident Claims*, 14 U. Fla. L. Rev. 328 (1962).

42. In the Matter of Wainwright, 14 A.D.2d 971, 221 N.Y.S.2d 409 (3d Dep't 1961); In the Matter of Phillips, 10 A.D.2d 689, 198 N.Y.S.2d 538 (1st Dep't 1960), *aff'd*, 9 N.Y.2d 873, 175 N.E.2d 825, 216 N.Y.S.2d 694 (1961); see note 29 *supra*.

43. N.Y. Ins. Law § 600.

44. See the cases collected in Gold, *Considerations of Equity in Vacatur of Arbitral Awards*, 15 Arb. J. 70 (1960).

45. In the Matter of Publishers' Ass'n, 280 App. Div. 500, 114 N.Y.S.2d 401 (1st Dep't 1952) (award of punitive damages was against public policy and existing contract law). Arbitration was said to be against public policy in the following cases: In the Matter of Swislocki, 273 App. Div. 768, 75 N.Y.S.2d 147 (1st Dep't 1947); In the Matter of International Ass'n of Machinists, 178 Misc. 661, 36 N.Y.S.2d 156 (Sup. Ct. 1942); Pfeiffer v. Berke, 4 Misc. 2d 918, 121 N.Y.S.2d 774 (Sup. Ct. 1953). *Cf.* Teeter v. Allstate Ins. Co., 9 A.D.2d 176, 192 N.Y.S.2d 610 (4th Dep't 1959), *aff'd*, 9 N.Y.2d 655, 173 N.E.2d 47, 212 N.Y.S.2d 71 (1961) (automobile insurance is no longer a private contract, fully negotiated by carrier and insured; a supervening public interest modifies its terms in keeping with public policy); Franklin v. John Hancock Mut. Life Ins. Co., 298 N.Y. 81, 80 N.E.2d 746 (1948) (life insurance policy endorsement approved by the Superintendent of Insurance containing a clause that suicide whether committed while sane or insane would limit the company's liability under the policy could not be enforced as it ran counter to legislative intent that only a sane person's suicide would limit company's liability); Cooper v. Commercial Ins. Co., 14 A.D.2d 55, 216 N.Y.S.2d 1004 (4th Dep't 1961), *aff'd*, 11 N.Y.2d 818, 182 N.E.2d 111, 227 N.Y.S.2d

ing a usurious mortgage⁴⁶ or contract⁴⁷ has been vacated. Similarly courts refuse to enforce an arbitration award of punitive damages for a simple breach of contract.⁴⁸ In other words, the scope of what can result from the arbitration of a dispute is not without limitation. It would seem then, that the public policy as set out in the statement of purpose⁴⁹ of MVAIC would give grounds for the court to review the non-consensual arbitration award in the instant case. A more fundamental reason may exist to vacate the award in the instant case since the right to a civil jury trial, as guaranteed by the New York State Constitution,⁵⁰ extends to a suit for damages⁵¹ or to an "... action in which a party demands and sets forth facts which would permit a judgment for a sum of money only ..."⁵² As a suit on an insurance policy is an action for a sum of money⁵³ mandatory arbitration as prescribed under MVAIC may well be unconstitutional⁵⁴ since it deprives the insured of a jury trial as well as court procedure except for the limited grounds of review provided for consensual arbitration by CPLR section 7511.

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438 (1962) (statutory text to be read into policy inconsistent therewith); *Kocak v. Metropolitan Life Ins. Co.*, 144 Misc. 422, 258 N.Y. Supp. 937 (Sup. Ct. 1932), *aff'd*, 237 App. Div. 780 (3d Dep't), *aff'd*, 263 N.Y. 518, 189 N.E. 677 (1933); also see Patterson, *Compulsory Contracts in the Crystal Ball*, 43 Colum. L. Rev. 731, 735-36 (1943).

46. In the Matter of Metro Plan, Inc., 257 App. Div. 652, 15 N.Y.S.2d 35 (1st Dep't 1939).

47. In the Matter of Gale, 176 Misc. 277, 27 N.Y.S.2d 18 (Sup. Ct.), *rev'd on other grounds*, 262 App. Div. 834, 28 N.Y.S.2d 270 (1st Dep't), *appeal denied*, 262 App. Div. 1006, 30 N.Y.S.2d 845 (1st Dep't 1941). *But see* In the Matter of Staklinski, 6 A.D.2d 565, 180 N.Y.S.2d 20 (1st Dep't 1958), *aff'd*, 6 N.Y.2d 159, 160 N.E.2d 78 (1959) (wherein the court affirmed an arbitration award providing for specific performance of a personal service contract even though no court would grant such relief); *Isbrandtsen Tanker, Inc. v. National Marine Eng'rs Beneficial Ass'n*, 236 N.Y.S.2d 808 (Sup. Ct. 1962), stating that although "... impartiality is a fundamental requisite of an arbitrator and he must be free from bias so that he will render a faithful, honest and disinterested determination, an award may not be vacated on such a ground as a matter of public policy unless the partiality is clearly established. ..." *Id.* at 811.

48. In the Matter of Publishers' Ass'n, 280 App. Div. 500, 114 N.Y.S.2d 401 (1st Dep't 1952).

49. N.Y. Ins. Law § 600.

50. "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provisions shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law." N.Y. Const. art. 1, § 2; see generally Weinstein, Korn & Miller, *New York Civil Practice* §§ 4101.01-4101.39 (1964).

51. See, e.g., *Veihelmann v. Manufacturers Safe Deposit Co.*, 303 N.Y. 526, 104 N.E.2d 888 (1952); *O'Brien v. Fitzgerald*, 143 N.Y. 377, 38 N.E. 371 (1894).

52. N.Y. CPLR § 4101(1).

53. See, e.g., *Imbrey v. Prudential Ins. Co. of America*, 286 N.Y. 434, 36 N.E.2d 651 (1941); *Schenck v. Prudential Ins. Co. of America*, 167 Misc. 282, 3 N.Y.S.2d 856 (Sup. Ct. 1938).

54. For a detailed elaboration on this argument and the workings of MVAIC see *The Problem of the Financially Irresponsible Motorist—New York's MVAIC*, 65 Colum. L. Rev. 1075 (1965).